

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CATHY S STONE
Claimant

KUM & GO
Employer

APPEAL NO: 10A-UI-05129-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/10
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available
Section 96.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 26, 2010, reference 01, that held the claimant was discharged for no misconduct on March 1, 2010, and claimant benefits are allowed. A telephone hearing was held on May 17, 2010. The claimant participated. Heather Williams, General Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time sales associate from May 6, 2009 to March 1, 2010. The claimant advised the employer at the time of hire she would be leaving employment when her daughter graduated in May 2010.

The employer hired a replacement employment for the claimant who began training on February 24, 2010. The employer discharged the claimant on March 2, because it had given the claimant's scheduled hours to the replacement employee.

When the employer learned the claimant had not started work with another business, it offered the claimant her old job back on March 28, and the claimant accepted with a start date of April 1st. When the claimant reported on April 1st, she turned in her name tag and key, because she accepted a job at Block Party Studios that began on April 12.

The department records show the claimant claimed for and received benefits for the weeks ending April 3, and April 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes that the claimant was not discharged from employment for misconduct on March 2, 2010.

Although the claimant had given the employer an indication she might be leaving sometime in May 2010, she never offered any specific separation date with notice. The employer chose to discharge the claimant after hiring a replacement employee that is not for any act of claimant misconduct.

Since the claimant was claiming for and receiving benefits when she initially accepted a re-hire to work by the employer to begin April 1st, and then accepted employment for another job that began on April 12, this issue is remanded to claims for a decision.

DECISION:

The department decision dated March 26, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on March 2, 2010. Benefits are allowed, provided the claimant is otherwise eligible. The job refusal and the waiting period to go to work for another employer during a period of the claimant's claim for benefits, is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs